

Central Administrative Tribunal
Principal Bench, Delhi.

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REGN. NO. OA 1686 Date of decision 18.12.87

Shri (Dr.) M.C. Nigam Applicant

Vs.

Union of India Respondents

Shri R.K. Kamal Advocate for the applicant.

Shri S.N. Sikka Advocate for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is a case under Section 19 of the Administrative Tribunals Act, 1985 against impugned order No. 752 E/3/Pt. XII dated 16.11.87 passed by the General Manager, Northern Railways (Respondent No.1) against the transfer of the applicant from the Northern Railway Central Hospital, New Delhi, to Patiala. The applicant, Dr. M.C. Nigam, joined the Northern Railway as Assistant Surgeon on 28.7.1965. He was promoted as Asstt. Medical Officer (Group B) on 1.1.1966. He was granted study leave by the railways for two years for doing post-graduate course for the degree of M.D. from March 1977 to March 1979 and after getting his M.D. (Psychiatry), he was posted as A.D.M.O.(Psychiatry). After the post of A.D.M.O.(Psy.) was upgraded to Senior Scale (Group A), the applicant was promoted as D.M.O. against the said post with effect from 26.11.1985. According to the applicant, there is only one post of D.M.O. (Psychiatry) on the Northern Railway and the applicant is the only candidate with post-graduate degree in Psychiatry on this railway. Without receiving the transfer order, issued by the General Manager Northern Railways on 16.11.87, he was served with an order dated 17.11.87 (Annexure A-1) issued by the Chief Hospital Superintendent (Respondent No.2) relieving him from the post which is still lying vacant. According to the applicant, the transfer is

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actuated by malice-in-law, as the same has been issued during the middle of the school session of his son studying in class XI for the course of Indian Certificate of Secondary Examination for which the facility is available only in Delhi. The applicant has said that his son's spleen was removed some time back requiring constant medical attention and vigilance. The wife of the applicant is employed as a Clinical Psychologist at Kalavati Saran Children's Hospital and Lady Harding Medical College, New Delhi, and as such the transfer of the applicant is in violation of the guidelines issued by the Government of India. The applicant is the only doctor in the Northern Railway with post-grad^{uate} M.D. degree in Psychiatry and there is only one post of D.M.O. (Psychiatry) at the Central Hospital. The transfer of the applicant to the general post of D.M.O. (Physician), Patiala, will, therefore, not only be against the professional interest but also against public interest as no arrangements exist at present to fill up the said post with an alternative doctor with M.D.(Psychiatry) as qualifications. The only other person with qualifications in Psychiatry is Dr. N.K. Goswami who is only a diploma holder in Psychiatry and is a much junior officer not qualified to hold the post of D.M.O. (Psychiatry). The case of the applicant is that after completing two years of service on 25.11.87, the applicant would become due for promotion to Junior Administrative Grade ^{of} Senior D.M.O. The Ministry of Railways vide their letter dated 25.9.87 have already decided to upgrade the post of D.M.O. (Psy.) to Junior Administrative Grade on the Northern Railway and the applicant is the only eligible candidate for the proposed upgraded post after 25.11.1987 on the Northern Railways. The applicant has also alleged that there are a number of other Senior DMOs in the Northern Railways who have had much longer stay in Delhi and the transfer of the applicant who is neither the juniormost or the seniormost should be considered as violation of Articles 14 and 16 of the Constitution. According to the applicant there is no justification to post a person who acquired M.D. degree in Psychiatry to a general post of D.M.O. (Physician), Patiala, which

will be against public interest. According to the applicant, the respondents have shown unholy haste in sparing the applicant even without serving the transfer order on him. He has, therefore, come to the Tribunal under extraordinary circumstances envisaged in Section 20 of the Administrative Tribunals Act without going through the procedure of representing to the respondents against the impugned order of transfer as no remedy is expected from the respondents in view of the manner in which the transfer order has been effected.

2. The respondents in their reply have taken a preliminary objection that the applicant should have exhausted all the remedies available to him as required under Section 20 of the A.T. Act before coming to the Tribunal. In their reply it has been stated that Class I officers can be transferred anywhere in Indian Railways as per their terms of appointment and the petitioner is liable to be transferred anywhere in India and abroad. It has been claimed that the Railways have ordered the transfer of the applicant in the administrative interest. The applicant has been transferred to Patiala to look after the medical cases of workers and staff posted in the Diesel Components Workshop, Patiala, where the industrial labour has more psychic problems and, therefore, the post of the applicant as D.M.O.(Physician), Patiala, will be more useful in the interest of administration and railway population there at large. It is claimed that the applicant has been upgraded to the post of D.M.O. on a regular basis with effect from 29.9.87, but there is no separate cadre of specialist on the Northern Railway and the services of doctors with any post-graduate qualifications are being utilised as general duty doctor. The claim of the applicant against the Senior Scale post of D.M.O (Psychiatry) is denied. The post of D.M.O. (Psychiatry) has been downgraded to Junior Scale as A.D.M.O. and Dr. (Mrs.) Renu Mesurya, A.D.M.O. has already been ordered for posting against the post vacated by the applicant vide orders dated 19.11.87 (Annexure-V). As the applicant is liable to serve anywhere and as his services are needed more in Patiala and as he has not been sent to a junior post, there is no discrimination against the

applicant. According to the respondents, the applicant is working in Delhi since the date of his appointment in 1965 and the fact that his wife is working in Delhi or his son is studying in Class XI cannot be considered as violative of the policies of the Central Government.

3. The learned counsel for the applicant pointed out to the Railway Board's Circular No. 87/E(GC)/10/68 dated 25.9.1987 where comprehensive restructure of the Medical Department/Cadre has been ordered. Para ⁴ of this circular states that DMOs with a total of 12 years or more of regular service in Group 'A' including two years service in Senior Scale as DMO are eligible to be considered for promotion to the next grade of JA (Rs. 3700-5000) on the basis of seniority-cum-fitness. The reorganisation in the Northern Railways Central Hospital also indicates upgradation of a few posts. One of the posts to be upgraded from Senior Scale to Junior Administrative Grade is that of DMO (Psychiatry). It was pointed out that while the Railway Board were planning to upgrade the post of DMO (Psychiatry) from the Senior Scale to Junior Administrative Grade, by the impugned order the General Manager of the Northern Railway has downgraded the post from the Senior Scale to Junior Scale to accommodate someone else. The person proposed to be posted in place of the applicant Dr. Mrs. Mesurya is only a probationer with no qualifications in Psychiatry. Dr. N.K. Goswami who has a diploma in Psychiatry is also a junior person working as A.D.M.O. The learned advocate for the applicant also made reference to Office Memorandum No. 1/17/86-FAS dated 3rd July, 1987 issued by the Department of Personnel & Training where Psychiatry has been mentioned under scarce category and the utilisation of a specialist ^{on a general post} (Psychiatrist) can never be considered as in public interest or on administrative grounds. He said that the applicant has been working as D.M.O. (Psychiatry) and not a Physician as suggested by the respondents. The posting orders (Annexure R-II) make it clear that the designation of the applicant was D.M.O. (Psychiatry), Central Hospital, New Delhi, although the general category may be DMO. It will not only be against the professional ethics but against the interest of the applicant if his specialisation is wasted and he is

put on general duty jobs, specially when he belongs to a scarce category. The learned counsel for the applicant further argued that while there are general Physicians in every hospital at each Division of the Northern Railways, specialists are appointed only at the Central Hospital at New Delhi. Psychic treatment is required not only at Patiala but by Railway personnel in other Divisions as well and such cases are referred to the Central Hospital. A person working in say, Allahabad Division, would not be referred to Patiala Division for treatment and if the applicant is transferred to Patiala, it would amount to denial of psychic treatment to persons working in various Divisions of the Northern Railways.

4. The learned advocate for the applicant cited two authorities in his favour. **ATR 1987 (Vol1) CAT 353 - Amar Nath Vaish Vs. Union of India & Others.** In this case the Jodhpur Bench of the Tribunal has decided that while the courts may not normally interfere with transfers of officials, but where there is colourable exercise of power by the authorities, the courts must interfere. In this case, the denial of a specialist's services in the Central Hospital and posting of a junior officer are very relevant considerations which would amount to action which would be termed as malice-in-law.

1973 SLJ 230 - Calcutta High Court - Dr. Smt. P. Chatterji. In this case the Calcutta High Court held that a transfer to accommodate another doctor would be bad in law. This, of course, is not the case of the respondents, who have not tried to accommodate anyone.

5. The main claim of the respondents is that the applicant had been working in Delhi all along, that the administration needed the services of a Psychiatrist at Patiala and that the applicant was not yet due for the Junior Administrative Grade. Shri Sikka, counsel for the respondents, also cited two cases in his support:

1. E.P. Royappa Vs. State of Tamil Nadu & Another -

1974(2) SCR 348 - In this case it has been held that where there are allegations of malafide, they have to be proved by the persons making them and where a transfer is done in exigencies of administration, the courts should not interfere in the same.

Patiala being a new hospital requires the services of an

/State of W.Bengal
and Others.

experienced officer and the transfer of Dr. Nigam would not attract Articles 14 and 16 of the Constitution.

2. SLR 1971 (2) 468 - Delhi High Court - S.K. Srivastava Vs. Union of India.

In this case the Delhi High Court held that downgrading of a post can be done in public interest and that the Railway Administration were competent to transfer the applicant and as such no injustice has been done to the applicant by his transfer.

6. I have carefully gone through the arguments on both sides. While it is accepted that the applicant is liable to be transferred anywhere in the country and that the Railways are within their rights to transfer the applicant to Patiala in exigencies of services, but it cannot be taken for granted that the present transfer is in public interest or in the exigency of service. It is on record that the applicant is the seniormost Medical officer in Northern Railways with Psychiatry as specialisation. It is also on record that the Railway Ministry had proposed to upgrade the post of D.M.O. (Psychiatry) from Senior Scale to Junior Administrative Grade. The applicant can still be considered for the post in Junior Administrative Grade even while working at Patiala, but since he belongs to a scarce category and since specialists are located at the Central Hospital, there should be a little more explanation in posting him to Patiala than a simple order of transfer. There should be some justification for downgrading the post at the Central Hospital and bringing in a junior person in place of the applicant. While it is true that there may be psychic problems at a Workshop, need for a Psychiatrist is apparently more at a Central Hospital where references can be made from any Divisional Medical Hospital. The way Dr. Nigam has been transferred in haste and relieved does suggest that the applicant was not transferred in public interest, but may be to accommodate someone although this position is not very clear. The whole business of downgrading the post and sending away a specialist at the Central Hospital does look a little out of place. Keeping in view also the guidelines that normally the

husband and wife should be kept together, as far as possible, and that unless there are special reasons, officials may not be transferred during mid-session of children's education, I feel that this is a fit case to quash the orders of transfer of the applicant from New Delhi to Patiala. In the circumstances, the transfer order dated 16.11.1987 is quashed. The application is allowed. There will be no order as to costs.



(B.C. Mathur)

Vice-Chairman